application of any person concerned, the point of law may be set down for hearing and disposed of at any time before the trial.

That sub-rule is analogous to the English Order 25 rule 2.

In *Hubbuck & Sons v. Wilkinson, Heywood & Clark*[4], Lindley M. R. sets out when the procedure open to a defendant under the English Order 25 rule 4—equivalent to our local 1932 Rule 1 sub-rule 33—is appropriate, and when the procedure under the English Order 25 rule 2—equivalent to our local 1932 Rule 1 sub-rule 31—should be used. That passage in his judgment, which was the judgment of the Court of Appeal, is as follows :—

> Two courses are open to a defendant who wishes to raise the question whether, assuming a statement of claim be proved, it entitles the plaintiff to relief. One method is to raise the question of law as directed by Order 25 rule 2; the other is to apply to strike out the statement of claim under order 25 rule 4. The first method is appropriate to cases requiring argument and careful consideration. The second and more summary procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks. The use of the expression 'reasonable cause of action' in rule 4 shows that the summary procedure there introduced is only intended to be had recourse to in plain and obvious cases.

This exactly expresses my own views on the case before me because I cannot say that this is a plain and obvious case in which I should act under 1932 Rule 1 sub-rule 33. In my view there is an issue which should be tried, and it can only be tried by the action pursuing its normal course and being heard in Court.

Accordingly this application by the defendant must be dismissed with costs.

Application Dismissed.

CHOP SUN CHEONG LOONG AND ANOTHER v. LIAN TECK TRADING COMPANY.

[Orig. Civil Juris. (Spenser Wilkinson, J.) April 19, 1947]

Landlord and tenant—Validity of tenancy created by Japanese Custodian of Enemy Property—International Law.

The first plaintiffs in this case were tenants of a shop No. 95 High Street, Kuala Lumpur, from 1937 until April 1944, when a Japanese military unit purported to take a sublease of the premises from the first plaintiffs. In May 1944, the premises were transferred by the Japanese Custodian of Enemy Property to a Japanese. In June or July 1945, the Japanese occupier sold the goodwill of the firm which carried on business in the premises to the defendants and it is admitted that the premises were then let to the defendants by the Japanese Custodian of Enemy Property. During the Japanese occupation the second plaintiff was absent from Kuala Lumpur and was declared by the Japanese to be an enemy. On the 10th November 1945, the second plaintiff wrote to the first plaintiffs offering them a tenancy of the premises on a monthly basis upon certain terms and this letter was acknowledged and the conditions agreed to by letter dated the 15th November 1945. The second plaintiff did not at any material time give to the defendants lawful notice to quit the said premises, but by a letter dated the 19th November 1945 the first plaintiffs, through their solicitor, purported to give notice to quit to the defendants. The defendants, since the British re-occupation, have from time to time tendered rent to the second plaintiff for every month from September 1945 to July 1946, both inclusive. The claim in this case was for recovery of possession of the premises together with mesne profits from 1st October 1945 and $10,000 damages suffered by the first plaintiffs. The basis of the first plaintiff's claim was that by virtue of their agreement with the Second plaintiff they became tenants of the premises in question and that the defendants were unlawfully put into possession of the premises by the Japanese Custodian of Enemy Property and have therefore been trespassers from the beginning. The defendants contended on the other hand, that the letting of the premises to the defendants by the Japanese Custodian of Enemy Property was a perfectly legitimate act; that in creating defendants' tenancy the Custodian was in a position analogous to that of a statutory agent of the owner; that a monthly tenancy is a continuing tenancy which can only be terminated by due notice and that therefore the defendants were still the tenants of the premises.

Held, (1) that the first plaintiffs had not satisfied the Court that the tenancy created by the Japanese Custodian of Enemy Property in favour of the defendants was in any way illegal at the time it was created;

(2) that the letting of the premises by the Japanese Custodian of Enemy Property to the defendants was a legitimate act which the re-occupying power was bound to recognise and that therefore the tenancy of the defendants was not terminated by operation of law on the re-occupation of the territory by the Allied Forces;

(3) that the second plaintiff in this case had taken no steps to put an end to the tenancy and therefore the tenancy of the defendants was still in existence at the time of the action.

Cases referred to :—

(1) *Alagappa Chettiar v. Kader and others* (1938) F.M.S.L.R. 209.

(2) *Bowen v. Anderson* (1894) 1 Q.B. 164.

(3) *Mellows v. Low* (1923) 1 K.B. 522.

(4) *Chartered Bank v. Bah Keng Ming* Civil Suit No. 18 of 1946.

CIVIL SUIT.

M. Edgar for the first plaintiffs.

Rajendra for the second plaintiff.

Joaquim (*Kitson Khong* with him) for the defendants.

Spenser Wilkinson, J. :—The second plaintiff in this case is the proprietor, the first plaintiffs who are

a firm were the pre-occupation tenants, and the defendants are the persons now in occupation of a shop No. 95, High Street, Kuala Lumpur. The claim is for recovery of possession No. 95, High Street, together with mesne profits from 1st October, 1945, and $10,000 damages suffered by the first plaintiffs. The following facts were either admitted by all parties or appear from an agreed bundle of documents which was put in at the hearing :—

(a) The first plaintiffs were tenants of the shop in question from 1937 until April, 1944, when a Japanese military unit purported to take a sub-lease of the premises from the first plaintiffs. This fact was reported by letter to the Japanese Authorities (presumably the department dealing with Enemy Property) by the first plaintiffs;

(b) In May, 1944, the premises were transferred by the Japanese Custodian of Enemy Property to a Japanese;

(c) In June or July, 1945, the Japanese occupier sold the goodwill of the firm which carried on business in the premises to the defendants and it is admitted that the premises were then let to the defendants by the Japanese Custodian of Enemy Property;

(d) During the Japanese Occupation the second plaintiff was absent from Kuala Lumpur and was declared by the Japanese to be an enemy;

(e) On the 10th November, 1945, the second plaintiff wrote to the first plaintiffs offering them a tenancy of the premises on a monthly basis upon certain terms which appear in a document attached to the plaint. This letter was acknowledged and the conditions agreed to by letter dated the 15th November, 1945, also attached to the plaint.

(f) The second plaintiff did not at any material time give to the defendants lawful notice to quit the said premises, but by a letter dated the 19th November, 1945, the first plaintiffs, through their solicitor, purported to give notice to quit to the defendants;

(g) The defendants, since the British re-occupation, have from time to time tendered rent to the second plaintiff for every month from September, 1945 to July, 1946, both inclusive.

The Plaint in this suit is dated the 18th July, 1946.

The basis of the first plaintiffs' claim is that by virtue of their agreement with the second plaintiff they became tenants of the premises in question and that the defendants were unlawfully put into possession of the premises by the Japanese Custodian of Enemy Property and have therefore been trespassers from the beginning. The defendants contend, on the other hand, that the letting of the premises to the defendants by the Japanese Custodian of Enemy Property was a perfectly legitimate act; that in creating defendants' tenancy the Custodian was in a position analogous to that of a statutory agent of the owner; that a monthly tenancy is a continuing tenancy which can only be terminated by due notice and that therefore the defendants are still the tenants of the premises.

In support of his argument, Counsel for the first plaintiffs referred to various passages appearing in *Oppenheim's* International Law. The passages quoted, however, deal rather with questions of sovereignty and with rights of appropriation and sale than with the occupation or custody of property during occupation, and are therefore of no assistance in determining the rights of the parties in this case.

An important passage from the same text-book which was not quoted on behalf of the first plaintiffs reads as follows (para. 282 at page 482) :—

> Postliminium has no effect upon such acts of a former military occupant connected with the occupied territory and with the individuals and property thereon, as he was, according to International Law, competent to perform; these acts are legitimate acts. Indeed, the State into whose possession such territory has reverted must recognise these legitimate acts....

The vital question in this case is whether or not the act of the Japanese Custodian of Enemy Property in taking into his custody the property of the absent second plaintiff who had been declared to be an enemy and letting that property was a legitimate act. The following passage from *Webber* at page 219 on The Effect of War on Contracts seems to me to be relevant :—

> To prevent the payment of money to enemies and 'in contemplation of arrangements to be made at the conclusion of peace,' the Board of Trade was empowered to appoint 'Custodians of Enemy Property' for the collection of enemy debts and the custody of enemy property.

I do not think it could be suggested that the English legislation dealing with the control of enemy property and trading with the enemy is contrary to International Law, and taking into custody and

controlling enemy property is a well-recognised incident of modern warfare. If, therefore, the Japanese authorities dealt with what was to them enemy property in a manner somewhat similar to that in which it might have been dealt with under English law it must be assumed that such actions were legitimate. Although no evidence was before me on the point, it was stated from the Bar that although the second plaintiff was absent her legally constituted attorney was present in Kuala Lumpur at all material times. In my opinion, however, this does not affect the matter. If the purpose of dealing with enemy property is to prevent the payment of money to enemies, this object may well be defeated if an enemy's agent is allowed to collect rents from tenants because that agent may find means of passing such rents to his principal. If the Custodian preferred to ignore second plaintiffs' attorney he was, in my view, entitled to do so.

The first plaintiffs have therefore not satisfied me that the tenancy created by the Japanese Custodian of Enemy Property in favour of the defendants was in any way illegal at the time it was created. What then was the position upon re-occupation of the territory by the Allied Forces? It has been held [*Alagappa Chettiar v. Kader and others*[1]] that a monthly tenancy is one of indefinite duration which exists until terminated by act of party or operation of law. With that decision I respectfully agree, and it appears to me to be in conformity with English Authorities (see *Bowen v. Anderson*[2] *and Mellows v. Low*[3]). In my opinion, the tenancy of the defendants was not terminated by operation of law because the letting of the premises to them was a legitimate act which the re-occupying power was bound to recognise. When, therefore, the owner came back she found a monthly tenancy actually existing in respect of the premises. She has not taken any steps to put an end to that tenancy and therefore, in my opinion, the tenancy still subsists.

It is to be observed that in the agreement made between the first and second plaintiffs one of the terms was as follows:—

> "You are to make your arrangements at your own cost and expense to eject the present occupier and obtain possession of the said premises".

The second plaintiff, having imposed this term upon the first plaintiffs, would no doubt have been bound to allow the use of her name in taking all necessary steps to eject the occupier. The first step in this process would have been a notice to quit given in the name of the proprietor to the occupier. This step has never been taken, and I have strong doubts as to whether the first plaintiffs can be said to be tenants of the second plaintiff at all as alleged in paragraph 4 of the plaint.

First plaintiffs placed some reliance upon the unreported case of the *Chartered Bank v. Bah Keng Ming*[4]. No written judgment was delivered in that case, and it is therefore impossible to know upon what precise grounds it was decided. It is sufficient to observe, however, that in that case a notice to quit was in fact served upon the defendants so that any tenancy which may have subsisted in that case was in fact determined. It is, therefore, of no assistance in deciding the case now before me.

In the view I take of the position of the defendants, it is not necessary for me to decide the various points raised by the defendants under the Rent and Charged Land (Restriction) Enactment and the Courts (Restriction of Civil Jurisdiction) Ordinance. There must be judgment for the defendants with costs on the higher scale.

AW YOCK BENG v. PUBLIC PROSECUTOR.

[Criminal Revision (Brodie, Ag. J.) April 1, 1947]

Customs and Excise Enactment, Trengganu. Sections 69 and 75—The Prohibition of Imports Order 1946 made under the Customs Proclamation 1945—Confiscation of rice imported contrary to Enactment—Transfer of Powers and Interpretation Ordinance, Section 15 (2).

In this case the appellant and the captain of the vessel in which rice belonging to the appellant was carried, were both charged under Section 69 (c) of the Customs and Excise Enactment, Trengganu, but were acquitted by the learned District Judge on the ground that no intent to evade the prohibition had been proved. The learned District Judge however found that the rice was imported, that there was no licence or permit to import and that the vessel carrying the rice anchored off Pulau Kapas (an island forming part of the State of Trengganu) and he therefore dealt with the rice the subject of the charge in the following way: "No order made as to the rice which is a prohibited article imported without licence."

Held, that the effect of the learned District Judge's findings was that he deemed an offence under Section 69 (b) of the Customs and Excise Enactment, which makes it an offence to be concerned in importing any goods contrary to the provisions of the Enactment, to have been committed and that being so, he had no discretion under S. 75 (1) of the Enactment but to order confiscation of the rice.